

Department of Health and Human Services

§ 77.6

(e) A recipient organization's cash management system fails to comply with generally accepted accounting principles or Departmental regulations or demonstrates irregularities, misrepresentations, fraud, or abuse in its operation.

§ 77.4 Remedial actions.

If, after the conclusion of the procedures set forth in § 77.5 or § 77.6 the Department finds that one or more of the conditions set forth in § 77.3 is or has been present, the Department may take the following remedial actions against a recipient organization's use of its letter of credit:

(a) The Department may place special limits, restrictions, or controls upon the recipient organization's use of its letter of credit.

(b) The Department may require more frequent or more detailed financial reporting from the recipient organization.

(c) The Department may suspend, reduce, or terminate the recipient organization's use of its letter of credit.

§ 77.5 Remedial action procedures.

Except as provided in § 77.6, the Department will use the following procedures whenever it seeks the remedial action specified in § 77.4.

(a) *Notice.* Prior to taking remedial action, the Department will provide the recipient organization written notice of its intended action setting forth both the legal and factual reasons therefor. Notice may be provided by certified or express mail, TWX, telegram, delivery, or similar means.

(b) *Opportunity to respond.* (1) The recipient organization has 30 days after receipt of the notice in which to submit to the Department a written statement setting forth any legal and factual reasons why it believes the proposed remedial action would be inappropriate. If no response is received by the Department within the 30-day period, the Department may make the proposed remedial action effective immediately. If a response opposing the taking of remedial action is received from the recipient organization within the 30-day period, no remedial action will be taken until a final decision has been reached under paragraph (c) of

this section. (2) The Department may prepare a written reply to the recipient organization's response. Any such reply will be forwarded to the deciding official together with the notice sent to the recipient organization and the organization's response, and a copy of the reply will be served on the recipient organization.

(c) *Departmental decision.* The Department's decision to take remedial action under this part will be made by an official of the Department who had no involvement with the initial determination to seek remedial action. The deciding official may affirm, reverse, or modify the initial determination. In making the decision, the official will consider only the notice provided by the Department, the recipient organization's statement, the Department's reply, together with any other documents attached to them, and statements at any informal conference held pursuant to paragraph (d) of this section. The official's decision will be provided to the recipient organization in writing and will constitute the Department's final administrative action on the matter.

(d) *Informal conference.* If, in the judgment of the official designated to make a final decision, it would materially enhance his ability to resolve the matters in dispute, he may convene an informal conference to question or hear an oral presentation by the parties. If an informal conference is convened it will be transcribed.

(e) *Effect of decision.* The decision in a proceeding under this section affects only the recipient organization's obligations related to its letter of credit and does not determine the organization's ultimate liability with respect to improperly spent funds or other misconduct.

§ 77.6 Emergency procedures.

(a) Should the Department determine that it cannot adequately protect assets of the Federal government available to a recipient organization under its letter of credit without taking remedial action prior to the procedures specified in § 77.5, it may immediately take remedial action subject to the subsequent completion of those procedures.